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9 Attorneys for Plaintiff
10 RUSSELL BRIMER

ENDORSED
FILED
ALAMEDA COUNTY

JUN 19 2013

CLERK OF THE SUPERIOR COURT
By JUDY ANN WARREN
Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 SPORTS WAREHOUSE; *et al.*,

18 Defendants.

Case No. RG12657875

^{PW}
[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND [PROPOSED]
CONSENT JUDGMENT

Date: June 19, 2013

Time: 2:30 p.m.

Dept. 522

Judge: Hon. Dennis Hayashi

Reservation No. R-1383547

1 Plaintiff Russell Brimer and Defendant Sports Warehouse, having agreed through
2 their respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a Consent Judgment, and following this Court's issuance of an
4 Order approving this Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is
7 hereby entered in accordance with the terms of the Consent Judgment attached hereto as
8 Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the
9 settlement under Code of Civil Procedure § 664.6.

10
11 **IT IS SO ORDERED.**

12
13
14 Dated: JUN 19 2013

15 
16 _____
17 JUDGE OF THE SUPERIOR COURT
18 **DENNIS HAYASHI**

1 Clifford A. Chanler, State Bar No. 135534
Christopher M. Martin, State Bar No. 186021
2 Stephen E. Cohen, State Bar No. 274416
THE CHANLER GROUP
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6 Attorneys for Plaintiff
Russell Brimer

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,
v.
SPORTS WAREHOUSE; and DOES 1-150,
inclusive,
Defendants.

Case No. RG12657875

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Sports Warehouse**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer
4 (“Brimer” or “Plaintiff”) and defendant Sports Warehouse (“Sports Warehouse” or
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each
6 individually referred to as a “Party.”

7 **1.2 Plaintiff**

8 Brimer is an individual residing in California who seeks to promote awareness of
9 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances in consumer products.

11 **1.3 Defendant**

12 Sports Warehouse employs ten or more persons and is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Brimer alleges that Sports Warehouse manufactured, imported, distributed, sold and/or
17 offered for sale lead tape containing lead for use in the State of California without the requisite
18 Proposition 65 health-hazard warnings. Lead is listed pursuant to Proposition 65 as known to
19 the State of California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as lead tape
22 containing lead including, but not limited to, *Lead Tape Reel (1/4 inch)*, which Sports
23 Warehouse manufactured, imported, distributed, sold and/or offered for sale in the State of
24 California, hereinafter referred to as the “Products.”

25 **1.6 Notice of Violation**

26 On May 24, 2012, Brimer served Sports Warehouse and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the
28

1 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that
2 the Products exposed users in California to lead. To the best of the Parties' knowledge, no
3 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
4 Notice.

5 **1.7 Complaint**

6 On or about November 29, 2012, Brimer, who was and is acting in the interest of the
7 general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court
8 in and for the County of Alameda against Sports Warehouse and Does 1 through 150, alleging,
9 *inter alia*, violations of Proposition 65 based on the alleged exposures to lead contained in the
10 Products.

11 **1.8 No Admission**

12 This Consent Judgment is the product of negotiation and compromise and is accepted by
13 Brimer and Sports Warehouse for purposes of settling, compromising and resolving issues
14 disputed in the Action. Brimer and Sports Warehouse enter into this Consent Judgment as a full
15 and final settlement of all claims that were raised in the Notice and/or Complaint, or which
16 could have been raised in the Notice and/or Complaint, arising out of the facts and conduct
17 alleged therein. Sports Warehouse denies the material, factual and legal allegations contained in
18 Brimer's Notice and Complaint and maintains that all Products sold and distributed in California
19 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
20 construed as an admission by Sports Warehouse of any fact, finding, issue of law, violation of
21 law, or conclusions of law, including, but not limited to, any facts or conclusions of law
22 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common
23 law or equitable requirements relating to lead; nor shall compliance or attempted compliance
24 with this Consent Judgment constitute or be construed as an admission by Sports Warehouse of
25 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
26 Sports Warehouse. However, this section shall not diminish or otherwise affect Sports
27 Warehouse's obligations, responsibilities, and duties under this Consent Judgment.
28

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Sports Warehouse as to the allegations contained in the Complaint, that venue
4 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
8 that this Consent Judgment is approved by the Alameda County Superior Court.

9 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

10 **2.1 Reformulation Standards and Commitment**

11 As of the Effective Date, Sports Warehouse shall only manufacture, import, distribute,
12 sell and/or offer for sale in California Products that are Reformulated Products or Products that
13 contain the proper health hazard warnings pursuant to Section 2.2 below. For purposes of this
14 Consent Judgment, “Reformulated Products” are defined as those Products containing
15 components that may be handled, touched, or mouthed by a consumer, and which components
16 yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method
17 9100 and less than 100 parts per million (“ppm”) lead when analyzed pursuant to EPA testing
18 methodologies 3050B and 6010B.

19 **2.2 Product Warnings**

20 The Parties hereby acknowledge and agree that Sports Warehouse has already
21 implemented a labeling program that includes the following warning language on the Product
22 packaging for all of its Products sold in the State of California:

23 **WARNING:** This product contains lead, a chemical known to
24 the State of California to cause cancer and birth
 defects (or other reproductive harm).

25 Therefore, the Parties agree that Sports Warehouse may continue to sell Products with the
26 above warning language for a period of three months after the Effective Date. However,
27 commencing three months after the Effective Date, Sports Warehouse shall, for all Products
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1 manufactured, imported, distributed, sold and/or offered for sale other than Reformulated
2 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each
3 warning shall be prominently placed with such conspicuousness as compared with other words,
4 statements, designs, or devices as to render it likely to be read and understood by an ordinary
5 individual under customary conditions before purchase or use. Each warning shall be provided
6 in a manner such that the consumer or user understands to which *specific* Product the warning
7 applies, so as to minimize the risk of consumer confusion. The bracketed language found in the
8 warnings below is optional.

9 (a) **Retail Store Sales.**

10 (i) **Product Labeling.** Sports Warehouse shall affix a warning to the
11 packaging, labeling, or directly on each Product sold in retail outlets in California by Sports
12 Warehouse or any person selling the Products, that states:

13 **WARNING:** This product contains chemicals, including lead,
14 known to the State of California to cause [cancer,
and] birth defects or other reproductive harm.
15 [Wash hands after handling.]

16 (ii) **Point-of-Sale Warnings.** Alternatively, Sports Warehouse may
17 provide warning signs in the form below to its customers in California with instructions to post
18 the warnings in close proximity to the point of display of the Products. Such instruction sent to
19 Sports Warehouse's customers shall be sent by certified mail, return receipt requested.

20 **WARNING:** This product contains chemicals, including lead,
21 known to the State of California to cause [cancer,
and] birth defects or other reproductive harm.
22 [Wash hands after handling.]

23 Where more than one Product is sold in proximity to other like items or to those that do
24 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the
25 following statement shall be used:¹

26
27 ¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another similar
28 product are offered for sale close enough to each other that the consumer, under customary conditions of purchase,
could not reasonably determine which of the two products is subject to the warning sign.

1 **WARNING:** The following products contain chemicals,
2 including lead, known to the State of California
3 to cause [cancer, and] birth defects or other
4 reproductive harm. [Wash hands after handling.]

5 *[list products for which warning is required]*

6 **(b) Mail Order Catalog and Internet Sales.**

7 In the event that Sports Warehouse sells Products via mail order catalog and/or the
8 internet, to customers located in California, after the Effective Date, that are not Reformulated
9 Products, Sports Warehouse shall provide warnings for such Products. Warnings given in the
10 mail order catalog or on the internet shall identify the *specific* Product to which the warning
11 applies as further specified in Sections 2.2(b)(i) and (ii).

12 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
13 order catalog shall be in the same type size or larger than the Product description text within the
14 catalog. The following warning shall be provided on the same page and in the same location as
15 the display and/or description of the Product:

16 **WARNING:** This product contains chemicals, including lead,
17 known to the State of California to cause [cancer,
18 and] birth defects or other reproductive harm.
19 [Wash hands after handling.]

20 Where it is impracticable to provide the warning on the same page and in the same
21 location as the display and/or description of the Product, Sports Warehouse may utilize a
22 designated symbol to cross reference the applicable warning and shall define the term
23 “designated symbol” with the following language on the inside of the front cover of the catalog
24 or on the same page as any order form for the Product(s):

25 **WARNING:** Certain products identified with this symbol ▼
26 and offered for sale in this catalog contain
27 chemicals, including lead, known to the State of
28 California to cause [cancer, and] birth defects or
 other reproductive harm. [Wash hands after
 handling.]

 The designated symbol must appear on the same page and in close proximity to the
 display and/or description of the Product. On each page where the designated symbol appears,

1 Sports Warehouse must provide a header or footer directing the consumer to the warning
2 language and definition of the designated symbol.

3 (ii) **Internet Website Warning.** A warning shall be given in
4 conjunction with the sale of the Products via the internet, which warning shall appear either: (a)
5 on the same web page on which a Product is displayed; (b) on the same web page as the order
6 form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web
7 pages displayed to a purchaser during the checkout process. The following warning statement
8 shall be used and shall appear in any of the above instances adjacent to or immediately following
9 the display, description, or price of the Product for which it is given in the same type size or
10 larger than the Product description text:

11 **WARNING:** This product contains chemicals, including lead,
12 known to the State of California to cause [cancer,
13 and] birth defects or other reproductive harm.
[Wash hands after handling.]

14 Alternatively, the designated symbol may appear adjacent to or immediately following the
15 display, description, or price of the Product for which a warning is being given, provided that the
16 following warning statement also appears elsewhere on the same web page, as follows:

17 **WARNING:** Products identified on this page with the
18 following symbol ▼ contain chemicals,
19 including lead, known to the State of California
to cause [cancer, and] birth defects or other
reproductive harm. [Wash hands after handling.]

20 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

21 In settlement of all the claims referred to in this Consent Judgment, Sports Warehouse
22 shall pay a total of \$9,000 in civil penalties in accordance with this Section. Each penalty
23 payment will be allocated in accordance with California Health & Safety Code §§25249.12(c)(1)
24 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
25 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

26 **3.1 Initial Civil Penalty**

27 Sports Warehouse shall pay an initial civil penalty of \$3,000, no later than three (3)
28 business days after the Effective Date. Sports Warehouse shall issue two separate checks: (1)

1 one to “OEHHA” in the amount of \$2,250; and (2) one to “The Chanler Group in Trust for
2 Russell Brimer” in the amount of \$750. All penalty payments shall be delivered to the
3 addresses listed in Section 3.3 below.

4 **3.2 Final Civil Penalty**

5 Sports Warehouse shall pay a final civil penalty in the amount of \$6,000 on or before
6 five months from the Effective Date. The final civil penalty shall be waived in its entirety,
7 however, if an officer of Sports Warehouse provides Brimer with written certification that,
8 commencing five months from the Effective Date and continuing on into the future, Sports
9 Warehouse shall meet the Reformulation Standard specified in Section 2.1 above, such that all
10 Products manufactured, imported, distributed, sold and offered for sale in California by Sports
11 Warehouse are Reformulated Products. Brimer must receive any such certification on or before
12 five months from the Effective Date. The certification in lieu of a final civil penalty payment
13 provided by this Section is a material term, and time is of the essence. Sports Warehouse shall
14 issue two separate checks for the final civil penalty payment: (1) one to “OEHHA” in the
15 amount of \$4,500; and (2) one to “The Chanler Group in Trust for Russell Brimer” in the
16 amount of \$1,500.

17 **3.3 Payment Procedures**

18 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- 19 (a) All payments owed to Brimer pursuant to Sections 3.1 through 3.2,
20 shall be delivered to the following payment address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710

- 26 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
27 Sections 3.1 through 3.2, shall be delivered directly to OEHHA
28 (Memo line “Prop 65 Penalties”) at the following addresses:

1 For United States Postal Service Delivery:

2 Mike Gyrics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyrics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 With a copy of the checks payable to OEHHA mailed to The Chanler
14 Group at the address set forth above in 3.3.1(a), as proof of payment to
15 OEHHA.

16 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Sports Warehouse
17 shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification
18 number shall be furnished upon request after this Settlement Agreement has been fully executed
19 by the Parties, and shall issue a separate 1099 form for the payment to OEHHA at the addresses
20 listed in Section 3.3.1 above.

21 **4. REIMBURSEMENT OF FEES AND COSTS**

22 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
23 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
24 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
25 Brimer then expressed a desire to resolve the fee and cost issue shortly after the other settlement
26 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
27 compensation due to Brimer and his counsel under general contract principles and the private
28 attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all
work performed through the mutual execution of this agreement. Sports Warehouse shall pay
\$42,000 for fees and costs incurred as a result of investigating, bringing this matter to Sports
Warehouse's attention, and negotiating a settlement in the public interest. Sports Warehouse

1 shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable
2 to “The Chanler Group” and shall deliver payment no later than three (3) business days after the
3 Effective Date, to the address listed in Section 3.3.1 above.

4 **5. CLAIMS COVERED AND RELEASED**

5 **5.1** This Consent Judgment is a full, final, and binding resolution between Brimer, on
6 behalf of himself and in the public interest, and Sports Warehouse, its parents, subsidiaries,
7 affiliated entities, sister and related companies, directors, officers, shareholders, employees,
8 attorneys, successors and assigns, (collectively “Defendant Releasees”) and each entity to
9 whom Sports Warehouse directly or indirectly distributes or sells Products, including but not
10 limited to downstream distributors, wholesalers, customers, resellers, retailers, franchisees,
11 cooperative members, licensors, and licensees that sold or distributed the Products (collectively
12 “Downstream Defendant Releasees”), regarding the alleged failure to warn about exposure to
13 lead arising in connection with Products manufactured, sourced, distributed, sold and/or offered
14 for sale by Defendant Releasees prior to the Effective Date. Compliance with the terms of this
15 Consent Judgment by Sports Warehouse and Defendant Releasees constitutes compliance with
16 Proposition 65 with respect to lead in Products.

17 **5.2** In further consideration of the promises and agreements herein contained, Brimer
18 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
19 assignees, and in the interest of the general public, hereby waives all rights to institute or
20 participate in, directly or indirectly, any form of legal action and releases all claims, including,
21 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
22 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
23 limited to, investigation fees, expert fees, and attorneys’ fees) limited to and arising out of
24 alleged or actual exposures to lead in the Products up through the Effective Date (collectively
25 “Claims”), against Sports Warehouse, Defendant Releasees, and Downstream Defendant
26 Releasees.

1 **5.3** Brimer also, in his individual capacity only and not in his representative capacity,
2 provides a general release herein which shall be effective as a full and final accord and
3 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
4 fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character or
5 kind, whether known or unknown, suspected or unsuspected, limited to and arising out of
6 alleged or actual exposures to lead pursuant to Proposition 65 in the Products manufactured,
7 imported, distributed, sold and/or offered for sale by Defendant Releasees and Downstream
8 Defendant Releasees.

9 **5.4** Brimer acknowledges that he is familiar with Section 1542 of the California Civil
10 Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
14 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
15 SETTLEMENT WITH THE DEBTOR.

16 Brimer, expressly waives and relinquishes any and all rights and benefits which he may
17 have under, or which may be conferred on him by the provisions of Section 1542 of the
18 California Civil Code as well as under any other state or federal statute or common law
19 principle of similar effect, to the fullest extent that he may lawfully waive such rights or
20 benefits pertaining to alleged exposures to lead from the Products sold by Sports Warehouse in
21 California before the Effective Date. In furtherance of such intention, the release hereby given
22 shall be and remain in effect as a full and complete release notwithstanding the discovery or
23 existence of any such additional or different claims or facts arising out of alleged or actual
24 exposure now or in the future to lead in the Products manufactured, imported, distributed, sold
25 and/or offered for sale by Sports Warehouse, that could otherwise be made against Sports
26 Warehouse, Defendant Releasees, and Downstream Defendant Releasees.

27 **5.5** Sports Warehouse on behalf of itself, its past and current agents, representatives,
28 attorneys, successors, and/or assignees, hereby waives any and all Claims against Brimer, his
attorneys, and other representatives for any and all actions taken or statements made (or those

1 that could have been taken or made) by Brimer and his attorneys and other representatives,
2 whether in the course of investigating claims or otherwise seeking enforcement of Proposition
3 65 against it in this matter with respect to the Products.

4 Sports Warehouse also provides a general release herein which shall be effective as a
5 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
6 expenses, attorneys' fees, damages, losses claims, liabilities and demands of Sports Warehouse
7 against Brimer, of any nature, character or kind, known or unknown, suspected or unsuspected,
8 limited to and arising out of alleged or actual exposures to lead pursuant to Proposition 65 in
9 the Products manufactured, imported, distributed, sold and/or offered for sale by Defendant
10 Releasees. Sports Warehouse acknowledges that it is familiar with Section 1542 of the
11 California Civil Code, which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
13 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
14 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
15 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
16 SETTLEMENT WITH THE DEBTOR.

17 Sports Warehouse expressly waives and relinquishes any and all rights and benefits
18 which it may have under, or which may be conferred on it by, the provisions of Section 1542 of
19 the California Civil Code as well as under any other state of federal statute or common law
20 principle of similar effect, to the fullest extent that Sports Warehouse may lawfully waive such
21 rights or benefits pertaining to alleged exposures to lead from the Products sold by Sports
22 Warehouse in California before the Effective Date.

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the court and
25 shall be null and void if, for any reason, it is not approved and entered by the court within one
26 year after it has been fully executed by all Parties, in which event any monies that have been
27 provided to Brimer or his counsel pursuant to Section 3 above, shall be refunded within fifteen
28 (15) days after receiving written notice from Sports Warehouse that the one-year period has
expired.

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7. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Sports Warehouse shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

To Sports Warehouse:

Ann G. Grimaldi
McKenna Long & Aldridge LLP
101 California Street, 41st Floor
San Francisco, CA 94111

To Brimer:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With a copy to:

Drew Munster, Chief Executive Officer
Sports Warehouse
181 Suburban Road
San Luis Obispo, CA 93401

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (“pdf”), each of which shall be deemed an original, and all of which, when
4 taken together, shall constitute one and the same document. A facsimile or pdf signature shall
5 be as valid as the original.

6 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

7 Brimer agrees to comply with the reporting form requirements referenced in California
8 Health & Safety Code § 25249.7(f).

9 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

10 The Parties agree to mutually employ their, and their counsel’s, reasonable best efforts
11 to support the entry of this agreement as a Consent Judgment and obtain approval of the
12 Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
13 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
14 approval of this Consent Judgment, which Brimer shall file, and which Sports Warehouse shall
15 not oppose. If any third party objection to the noticed motion is filed, Brimer and Sports
16 Warehouse shall work together to file a joint reply and appear at any hearing before the Court.
17 If the Court does not approve the motion to approve this Consent Judgment, and the Parties
18 choose not to pursue a modified Consent Judgment within 30 days of said denial, or in the event
19 that the Court approve this Consent Judgment and any person successfully appeals that
20 approval, all payments made pursuant to this Consent Judgment will be returned to Sports
21 Warehouse.

22 **13. MODIFICATION**

23 This Consent Judgment may be modified only: (1) by written agreement of the parties
24 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
25 motion of any Party and entry of a modified Consent Judgment by the court.

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1 **14. ENTIRE AGREEMENT**

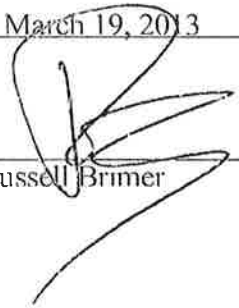
2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **15. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

12 **AGREED TO:**

13 Date: March 19, 2013

14
15 
16 By: Russell Brimer

AGREED TO:

Date: _____

By: _____
Drew Munster, Chief Executive Officer
Sports Warehouse

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1 **14. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **15. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

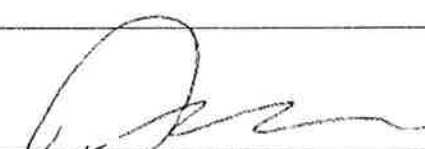
12 **AGREED TO:**

AGREED TO:

13 Date: _____

Date: _____

14 By: _____
15 Russell Brimer

14 By: 
15 Drew Munster, Chief Executive Officer
16 Sports Warehouse

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